

**Notice of Allowability**

Application No.

09/977,076

Applicant(s)

ORTYN ET AL.

Examiner

Art Unit

Aung S. Moe

2685

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on 6/28/2005.
2. ☒ The allowed claim(s) is/are 1-15 (renumbered as 1-15 respectively).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

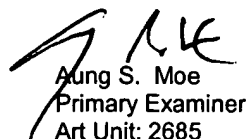
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
Aung S. Moe  
Primary Examiner  
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***Election/Restrictions***

1. Applicant's election of Species of Figs. 1-5 and claims 1, 3, 4, 6, 9, and 12-15 in the reply filed on 6/28/2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

In addition, the Examiner agrees that claims 1 and 13-15 are generic.

2. Claims 1 and 13-15 are generic and allowable. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 2, 5, 7, 8, 10 and 11, directed to the species of Figs. 1-5 are no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim. However, claims 16-22, directed to the species of Figs. 6-28 remain withdrawn from consideration since they do not all depend upon or otherwise include all the limitations of an allowed generic claim as required by 37 CFR 1.141.

In view of the above noted withdrawal of the restriction requirement as to the linked species, applicant(s) are advised that if any claim(s) depending from or including all the limitations of the allowable generic linking claim(s) be presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

### EXAMINER'S AMENDMENT

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Harold H. Bennett II (Reg. No. 52,404) on September 16, 2005.

In claims:

**Claims 16-22 are now cancelled** without prejudice to Applicants' right to submit those claims in a separate, divisional application.

### *Allowable Subject Matter*

4. The following is an examiner's statement of reasons for allowance: Claims 1-15 are considered allowable over the prior art of record since the prior art of record fails to show or fairly suggest the method and system for imaging a target object including a first beam splitter, a defocus system, a reflector configured and a second beam splitter substantially transmit part of one of the first transmitted light as unaltered light and the defocused light as defocused light and configured to substantially reflect part one of the defocused light as defocused light and the first

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reflected light as unaltered light, and the second beam splitter oriented according to a mechanical angle such that the unaltered light and the defocused light have an angular separation as substantially described and connected in the independent claims 1 and 13-15.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Following references are related to the present claimed invention:

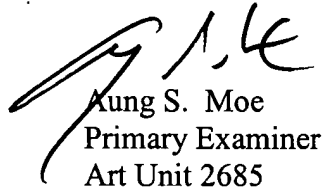
5,686,960	2004/0085527	2004/0021868
6,608,682	6,249,341	2002/0071121

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aung S. Moe whose telephone number is 571-272-7314. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward F. Urban can be reached on 571-272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Aung S. Moe  
Primary Examiner  
Art Unit 2685

A. Moe  
September 16, 2005